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8	BEFORE THE
ľ	BOARD OF REGISTERED NURSING
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. $200-102$
12	JESUS RICARDO ROJAS 5768 East Ashlan Avenue
13	Fresno, CA 93727  ACCUSATION
14	Registered Nurse License No. 684752
15	Respondent.
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17	Complainant alleges:
18	<u>PARTIES</u>
19	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20	official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
21	Department of Consumer Affairs.
22	2. On or about July 27, 2006, the Board issued Registered Nurse License Number
23	684752 to Jesus Ricardo Rojas ("Respondent"). Respondent's registered nurse license was in full
24	force and effect at all times relevant to the charges brought herein and will expire on October 31,
25	2009, unless renewed.
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Accusation

#### STATUTORY PROVISIONS

- 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
  - 5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct. . .
- (b) Procuring his or her certificate or license by fraud, misrepresentation, or mistake.
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . .
- 6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

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(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof. . .

#### **COST RECOVERY**

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FIRST CAUSE FOR DISCIPLINE

#### (Criminal Convictions)

- 8. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (f), in that he was convicted of crimes which are substantially related to the qualifications, functions, and duties of a registered nurse, as follows:
- a. On or about June 27, 2006, in the criminal proceeding titled *People v. Jesus Ricardo Rojas* (Sup. Ct. Fresno County, Central Division, 2006, No. T06904798-6), Respondent was convicted by the Court on his plea of guilty to one misdemeanor count in violation of Vehicle Code section 23152, subdivision (b) (driving with a 0.08% or higher blood alcohol level). The incident upon which the conviction is based occurred on approximately November 24, 2005.
- b. On or about October 29, 2008, in the criminal proceeding titled *People v. Jesus Ricardo Rojas* (Sup. Ct. Fresno County, Central Division, 2008, No. M08926972, Respondent was convicted by the Court on his plea of nolo contendere to one misdemeanor count in violation of Vehicle Code section 23152, subdivision (b) with an admission of one prior. Further, Respondent stipulated that his blood alcohol content on the date of the incident was .14 percent. The incident upon which the conviction is based occurred on approximately October 26, 2008.

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#### SECOND CAUSE FOR DISCIPLINE

#### (Use of Alcoholic Beverages to an Extent

#### or in a Manner Dangerous or Injurious to Others)

9. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b). On or about November 24, 2005, and October 26, 2008, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to himself, others, and the public, as set forth in subparagraphs 8(a) and (b), above.

#### THIRD CAUSE FOR DISCIPLINE

#### (Convictions Related to the Consumption of Alcoholic Beverages)

10. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (c). On or about June 27, 2006, and October 29, 2008, Respondent was convicted of criminal offenses involving the consumption of alcoholic beverages, as set forth in subparagraphs 8(a) and (b), above.

#### FOURTH CAUSE FOR DISCIPLINE

#### (Procuring a License by Fraud, Misrepresentation, or Mistake)

- 11. Respondent is subject to disciplinary action pursuant to Code Section 2761, subdivision (b), in that he procured his California Registered Nurse License by fraud, misrepresentation, or mistake, as follows:
- a. On a date uncertain, Respondent submitted an Application for Licensure by Examination ("application") to the Board.
- b. On or about March 20, 2006, Respondent certified, under penalty of perjury and with the understanding that providing false information or omitting required information was grounds for denial of licensure or license revocation in California, that all of the information provided in connection with the application was true, correct, and complete. With regard to the question on the application that asked, "Have you ever been convicted of any offense other than minor traffic violations?" Respondent marked the "Yes" box.

1	c. On or about April 26, 2006, Respondent provided the Board with a letter outlining his
2	convictions. Respondent stated he was convicted on February 1, 1995, for contributing to the
3	delinquency of a minor and was arrested on November 24, 2005, for driving under the influence
4	of alcohol <sup>1</sup> . However, Respondent failed to divulge to the Board that on April 10, 2000, in the
5	criminal proceeding titled People v. Jesus Ricardo Rojas (Sup. Ct. Fresno County, Central
6	Division, 2000, No. T00901637-9), he was convicted by the Court on his plea of no contest to one
7	misdemeanor count in violation of Vehicle Code section 23109, subdivision (a) (engaging in a
8	speed contest).
9	<u>PRAYER</u>
10	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11	and that following the hearing, the Board of Registered Nursing issue a decision:
12	1. Revoking or suspending Registered Nurse License Number 684752, issued to Jesus
13	Ricardo Rojas;
14	2. Ordering Jesus Ricardo Rojas to pay the Board of Registered Nursing the reasonable
15	costs of the investigation and enforcement of this case, pursuant to Business and Professions
16	Code section 125.3; and
17	3. Taking such other and further action as deemed necessary and proper.
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19	DATED: 8/28/09 Xouse K. Bailey, M.Ed. 180
20	Interim Executive Officer  Board of Registered Nursing
21	Department of Consumer Affairs State of California
22	Complainant
23	03579110SA2009310373
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27	As stated in subparagraph 8(a), Respondent was not convicted of this driving under the influence charge
28	until June 27, 2006.